

IMPORTANT 1/6/9

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OUTGOING AIRGRAM

PREPARING OFFICE WILL  
TYPE HERE CLEARLY THE  
CLASSIFICATION OF THE  
MESSAGE:

Department of State

~~CONFIDENTIAL~~

NO. \_\_\_\_\_

TIME \_\_\_\_\_

Washington,

AMEMBASSY,

PRAHA

*Did not go out  
see memo 7-11-46*

The Department suggests that, if it has not already been done, an approach be made in conjunction with the British and French to the Czech Government, presenting the substance of the agreement concluded 8 July among the U.S., U.K., and France with respect to the control of looted articles, and requesting the cooperation of the Czech Government in carrying out the plan. (References: No. 78 Paris to Praha, July 8, Dept's 1079, Aug. 30, No. 1653 from Praha, September 11.)

In addition it should be suggested that the Czech Government take measures designed to discover, seize, and hold for restitution any looted objects including cultural objects whether originating in other liberated countries or in Germany, and Austria or in any other country, and whether of Jewish or other ownership. When lists of missing objects are received from the governments of the other liberated countries, it is suggested that the Czech Government be requested to make restitution of such of these objects as may be found within the boundaries of Czechoslovakia to the government of the claimant countries. Objects identified as having been looted in Germany from Jews or nationals of any of the United Nations or Italy and Austria should be returned to the commanding general of the zone in Germany from which looted.

*Italy or Austria*  
Objects looted from nationals of any of the United Nations in any other enemy state in Europe should be restituted to the Government of the United Nation whose national was despoiled.

*Italy or Austria*  
The Department suggests that objects looted from Jews in other enemy countries in Europe be restituted to the government of the country from which looted. *or Austria*

Although the Trustee Corporation has not yet been created, you may mention the proposal for its creation and the interest of the Commission on European Cultural Reconstruction in the residue of looted Jewish cultural treasures not claimed, or restituted under other programs, and urge that efforts be made to locate and preserve such objects.

*[insert last paragraph]*

*Acheson Acting  
GWB*

ES:RHStimson:pkf  
10/3/46

GA CE ADO FC A-H

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RG 59

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- 2 -

and which might not be claimed or restituted under other programs.  
 The mission is requested to urge the Czech Government to make  
 efforts to locate and preserve such objects.

Sincerely yours,

J. H. Hilldring  
 Assistant Secretary

NOV 8 1946

*ES:RHStinson:plf*

10-24-46

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RG 59

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*Did not go out  
see memo 7-11-74*

In reply refer to  
ES: 740.00119 EN/9-346 CS/V

My dear Mr. Michael:

Reference is made to your letters of August 26 and September 3 relating to looted Jewish cultural treasures in Germany and Austria.

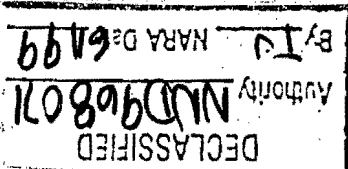
The American Embassy in Praha has informed the Department of its belief that the Government of Czechoslovakia would be inclined to return to the rightful owners such of these treasures as may be ultimately found and identified, and that the Czech Government is not inclined to assert any legal or moral right to retain such objects.

The Department has advised its mission in Praha to request the Czech Government to make every effort to find and restitute to the government of the claimant's country all looted cultural objects which might be in Czechoslovakia, including Jewish cultural objects. The Department has requested the cooperation of the governments of neutral liberated, and allied countries in a program for the restitution of looted cultural objects not found in Germany and Austria. Under this program, as under the program of restitution from Germany and Austria, restitution is to be made to the government of the country from which the objects were looted, and includes Jewish cultural objects on a basis of equality with other objects. The Department is recommending that objects identified as having been looted in Germany from Jews or nationals of any of the United Nations or Italy and Austria should be returned to the commanding general of the zone in Germany from which looted. The Department is further suggesting that objects looted from Jews in Italy and Austria or in ex-enemy countries in Europe other than Germany be restituted to the governments of these countries.

The Department has requested its mission in Praha to mention to the Czech Government your proposal for the creation of the Trustee corporation, and the interest of your commission in the residue of looted Jewish cultural treasures which might be found in Czechoslovakia

and

Mr. Jerome Michael,  
Acting Chairman,  
Commission on European  
Jewish Cultural Reconstruction,  
1841 Broadway,  
New York 23, New York.



- 2 -

governments of the countries in which they are now located directly to the proposed international Jewish trustee corporation, by way of an exception to the established principle that restitution should be made by such governments to the governments of the countries from which the objects were looted.

Mr. Stimson expressed the opinion that if the trustee were allowed to define Jewish cultural treasures, there would be a possibility of abuse and complications. Mr. Mason expressed the opinion that in Germany at least the Allied occupation authorities would decide in each case whether an object claimed by the trustee is a Jewish cultural treasure, and whether to transfer it to the trustee.

Mr. Stimson expressed the view that both the governments of the countries in which the objects are now located, and the governments of the countries from which they were looted should be given an opportunity to consent or refuse consent to the transfer of the objects to the proposed international Jewish trustee corporation. In the case of Jewish objects looted in Poland and now in Czechoslovakia, or looted in France and now in Switzerland, the Government of the United States or OMGUS or the Zone commanders in Germany and Austria, or the ACC have no authority to consent to the transfer of these objects to the proposed trustee. Mr. Mason stated that the United States can only suggest such action to the governments having possession of, or a legal claim to, the objects.

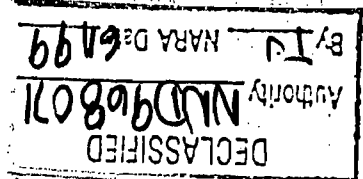
In the case of Jewish cultural objects looted in a European country other than Germany, for example, Poland, and now in the American Zone in Germany, Mr. Stimson's view is that, although the United States may have the physical power to transfer these objects to the proposed trustee instead of to the Mission sent by the Government of Poland, this should be done only with the consent of the Polish Mission or Government in each case or for each class of objects.

Mr. Stimson expressed the opinion that the governments of the countries from which the objects were looted and of those in which the objects are now located should be approached during the process of creating the trustee with the question whether they would consent to the

transfer

RG 59

Box 16



- 3 -

transfer of looted Jewish cultural treasures to the proposed international Jewish trustee corporation in cases in which the individual Jewish owners have died without heir or in case the Jewish community served by the objects has been destroyed or dispersed. This view seemed to receive the assent of the conferees.

Mr. Stimson felt that his draft telegram and letter were somewhat premature because the ACC has not completed an agreement on restitution to ex-enemy states. Mr. Hemmendinger and Mr. Keefer felt that they were premature because the general approach referred to above has not been made, and the proposed international trustee has not yet been established.

It was decided that the draft telegram and letter would be held by Mr. Stimson pending further developments, and that he would keep in touch with Mr. Keefer and Mr. Hemmendinger.

Mr. Stimson stated that ACC was interested in the problem, and he suggested that they be consulted.

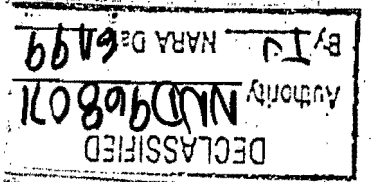
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RG 59

Box 16



T.H.S.

## DEPARTMENT OF STATE

*Memorandum of Conversation*

DATE: November 14, 1946

SUBJECT: Restitution of Jewish Cultural Treasures from and to the Various Countries of Europe, and the Role of the Proposed International Jewish Trustee Corporation.

PARTICIPANTS: Mr. Baker, ES  
Mr. Mason, ES  
Mr. Stimson, ES  
Mr. Hemmendinger, A-H  
Mr. Keefer, GA

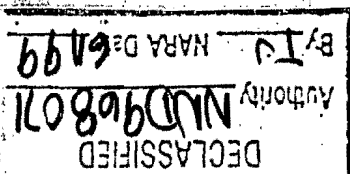
COPIES TO: Mr. Baker  
Mr. Mason  
Mr. Stimson  
Mr. Hemmendinger  
Mr. Keefer  
Miss Hall, ADO

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The general problem was discussed. Mr. Hemmendinger stated that criticism from General Clay, American Zone, Germany, of the trusteeship proposal were along the lines of those made by Mr. Stimson in his memorandum of September 24. Mr. Keefer and Mr. Hemmendinger stated that the objectionable provisions for seizure of Jewish cultural treasures in German public museums, libraries and archives had been dropped from the plans for the trusteeship in recent conversations with Mr. Michael. Mr. Baker and Mr. Stimson pointed out that Mr. Michael's proposal for restitution of Jewish cultural treasures by the Government of Czechoslovakia direct to the proposed international Jewish trustee corporation was a departure from the rule of restitution from governments to governments established by Department policy, quadripartite procedure, and the tripartite agreement of July 8, 1946.

Mr. Baker showed Mr. Hemmendinger and Mr. Keefer the text of the tripartite agreement of July 8, 1946, which set up a procedure for restitution from neutral and liberated countries to the governments of the liberated countries. Mr. Hemmendinger and Mr. Keefer desired to have Jewish cultural treasures turned over by the

governments



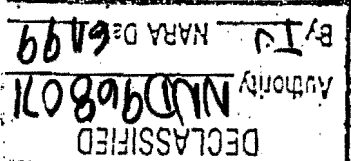
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I stated that these provisions opened up a wide field of action, which it might be difficult to defend. Under them, a collection of books and manuscripts on Jewish history legally owned by a university or library, or paintings or music scores by Jewish artists or composers or depicting Jewish subjects or themes (e.g. many of Rembrandt's paintings, drawings and etchings) legally owned by public museums, libraries, or archives in the American zone of Germany and Austria would be seized by United States troops or officials and turned over to a Jewish trustee corporation for distribution to Jews or Jewish organizations in all parts of the world, unless the United States is a party to some specific international agreements requiring different treatment of some of the objects. I stated that this appeared to be a very general action resembling replacement in kind or substitution, but going much beyond anything which had been considered or agreed to with regard to non-Jewish cultural property. It appears also to resemble reparations, although it has generally been understood that enemy-owned cultural objects would not be used for reparations. It gives the impression of an act of revenge on the part of the Jews using the American Army and American officials as a reverse version of the Einsatzstab Rosenberg. Under the loose general wording of the proposal it might be considered an authorization to loot German-owned cultural treasures having some Jewish references or associations for the benefit of the world Jewish community.

Mr. Hemmingdinger explained that the Jewish representatives who discussed the proposal with State Department officials originally proposed merely a form of replacement in kind or substitution. They were told that the Roberts Commission was opposed to using German cultural objects for replacement, and that no replacement program had been agreed to. Mr. Barnett of GA advised them to drop the replacement provision and substitute the general provisions quoted above. Mr. Hemmingdinger did not oppose these provisions although he recognized that they were very general, and should be considered more in detail later. Mr. Hemmingdinger seemed inclined, however, to defend the provisions, apparently as a form of retribution.

It should be pointed out that the seizure of German and Austrian cultural property would be contrary to the restitution policy of the Department, contrary to quadripartite





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- 2 -

restitution principles and procedures, and contrary to the accepted principle that German cultural treasures are not to be used as reparations. To be sure the "Draft Agreement on Restitution of Article of Cultural Value" proposed by the Roberts Commission in 1945 and accepted by the Department<sup>1</sup> provided for replacement in kind from German cultural objects of looted cultural objects which were lost or destroyed. However, the Allied Control Council for Germany has not yet agreed on a replacement program. If adopted, such a program would probably be limited to instances of proven loss or destruction of specific objects of proven ownership. The replacement would probably be made to governments acting on their own behalf or on behalf of individual claimants. If such a program is adopted, it would be open to individual Jews or Jewish organizations to make such claims through their respective governments. Article 9 of the draft agreement on Restitution of Articles of Cultural Value reads as follows: "Works of art and objects of artistic and historic value used in connection with religious ceremonies or edifices of any faith which have proved ecclesiastical ownership prior to 1938 may not be used for replacement in kind." It appears that the Commission on European Jewish Cultural Reconstruction is asking the Department of State to modify this section of its policy in order to permit the transfer to an international Jewish trustee corporation of the objects used in connection with Jewish religious ceremonies or edifices in Jewish communities in the American Zone of Germany and Austria which communities have been wiped out. Since the objects are no longer needed for religious purposes at the site of the former communities, it is proposed that they be transferred to an international Jewish trustee for distribution to existing Jewish religious communities which can use them. I believe that the Department should be very sympathetic with this proposal, and modify its policy accordingly. However, it is suggested that in every case, the proper procedure is for the international Jewish trustee to make its proposal to the government having the legal right to dispose of the objects in question, that is to the government having sovereignty over the territory in which the destroyed and/or looted religious community was located. In the case of Germany, this would be at present either the Allied Control Council, the zone commanders acting under approved quadripartite procedures, and the German local or provincial courts having jurisdiction of the matter. It seems illogical to deny the proposed international Jewish trustee corporation the use of a controlled system of individual

1. See Department's telegram to London no. 4490 of June 5, 1945.

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- 2 -

replacement in kind or the transfer of cultural property of destroyed Jewish religious communities; and to substitute therefore a sweeping general provision for military seizure of German and Austrian cultural treasures in public museums in the American Zone claimed by the corporation to have a Jewish character or association, as a species of reparations, without any formal legal procedure or review by properly constituted governmental judicial agencies.

I told Mr. Hemmingdinger that such a seizure of German and Austrian cultural property might be contrary to international law and agreements to which the United States is a party.

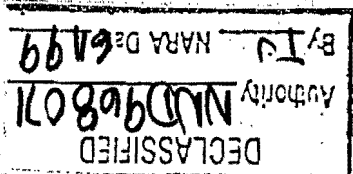
I find that Article 56 of Hague Convention No. II of 1899 and the same article of Hague Convention No. IV of 1907 respecting the laws and customs of war on land forbids the seizure of the property of municipalities or that of institutions dedicated to religion, charity, education, and the arts and sciences even when state property, and provides that such seizure should be made the subject of legal proceedings. Both of these conventions were ratified by the United States. In spite of Article 2 of the 1907 Convention which stipulates that the provisions contained in the convention "do not apply except between contracting powers, and then only if all the belligerents are parties to the convention," the principles set forth in the convention have been held to apply to the present war with Germany.

The verdict of the International Military Tribunal at ~~Nuremberg~~ on the indictment against Alfred Rosenberg found against him that "He directed that The Hague rules of land warfare were not applicable in the occupied eastern territories."<sup>2</sup> Article 56 of The Hague rules is declaratory of existing customary international law on the subject. Compliance with these rules is the established policy of the Government of the United States. This is shown by the fact that the United States ratified both the 1899 and the 1907 Hague Conventions on the rules of land warfare, and that the United States War Department's Basic Field Manual incorporates the provisions of Article 56 as Paragraph 318 of its "Rules of Land Warfare." Moreover, the United States is a party to the Pan American Convention signed at Washington on April 15, 1935 on the "Protection of Artistic and Scientific Institutions and Historic Monuments" which contains similar provisions.

2. The New York Times, October 2, 1946, p. 22, Col. 8.

RG 59

Box 16



5  
- 4 -

A collection of books and manuscripts on Jewish history in the possession of a great German library or university is in good hands and open to use by scholars. The same collection distributed to Jewish organizations in various parts of the world might become dispersed, lost, or destroyed, fall into inexperienced hands, be inaccessible to scholars, and even become a means of transmitting funds for political purposes.

Mr. Hemmingdinger stated that the reason for the provision was that the Jewish community in various parts of Germany and Austria has been destroyed, and the Jews killed or dispersed. Consequently, there is no longer a need for Jewish cultural objects in the libraries and museums in those communities, and they should be sent to the communities in Palestine or elsewhere to which the Jews have emigrated.

So far as religious articles and books used only by such Jewish communities, this seems a reasonable proposal. However, any agreement on this subject should be carefully worded to avoid the general implications pointed out above. Collections assembled through Jewish contributions or taxation of Jewish communities might be claimed if the Jews have been killed or dispersed. Collections belonging to the German people as a whole or non-Jewish foundations and of general scholarly, historic, or artistic interest, should not be seized, requisitioned, acquired at forced purchase, or used as reparations. The adoption of a program of replacement in kind for Jewish cultural objects should await and be a part of a general replacement program, if and when adopted by the four powers.

Article 3 of the proposal for a trusteeship corporation provides that "When the corporation shall have been constituted trustee as aforesaid, it shall send a technical mission of limited size into the American Zone of occupation which shall:

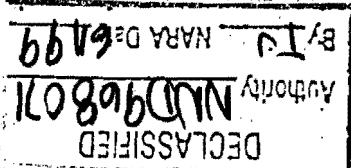
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"c. Ascertain what Hebraica and Judaica and what other Jewish religious or cultural objects are owned by or in the possession of German and Austrian state, municipal and other publicly owned or maintained libraries, archives, museums and similar institutions in the American Zone of occupation, whenever and however they were acquired by such institutions."



RG 59

Box 16



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- 5 -

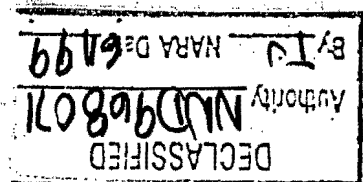
The article continues by providing that the commanding generals of the United States Forces for Germany and Austria shall on their part admit the corporation's mission to the American Zone of occupation, give its members free access to all places in which Jewish religious or cultural objects are kept or stored and provide them with such "other assistance and such transportation and other facilities as are reasonably necessary to enable them to perform their functions."

Under the proposal, the American commanding generals furthermore are to "c. Seize and take into their possession all Hebraica, Judaica and other Jewish religious and cultural objects which are owned by or in the possession of German and Austrian State, municipal and other publicly owned or maintained libraries, archives, museums and similar institutions."

This Jewish technical mission, it should be noted, is to have much more power and authority than any of the missions sent by national governments to claim restitutable objects. The Jewish mission may visit any public or private collection of cultural objects in Germany to search for such objects. On its behalf, the American commanders are to seize all public collections in Germany of Jewish cultural objects, apparently as defined by the Jewish mission, and turn them over to the Jewish trustee corporation. This appears to make a private claimant or a voluntary organization representing or trustee for private claimants, the judge of what public property shall be seized on their behalf by the United States Government as a very general species of replacement in kind, or as reparations.

It should be emphasized that the seizure by the United States Army of any cultural objects legally owned by German museums, libraries, or archives in the American Zone of occupation in Germany and Austria would be a violation of international law as stated in Article 56 of The Hague rules of land warfare. Such action by American officers would moreover be a violation by them of paragraph 318 of the War Department's Basic Field Manual on the "Rules of Land Warfare."

In my opinion, such action is contrary to the policy or interests of the United States. It would complicate the security problems of the United States Zone and tend to perpetuate a feud. The protection of the members of the Jewish mission making a survey for such illegal action might be difficult. Even if a program of replacement in kind is decided upon eventually, it should be done by proper legal proceedings having a judicial character. Some control and review of the claims of the Jewish mission should be maintained. Monuments and fine art officers or other officials of the AMG should be brought into the



- 7 -

picture as advisers or reviewers.

It would be unjust to apply replacement or transfer measures against German cultural collections in the American Zone only. Such proposals should not be applied in the United States Zone unless and until adopted as a quadripartite measure for application in all zones.

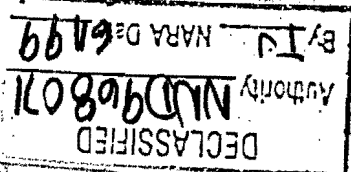
If an international Jewish trustee corporation is established and given custody of looted Jewish cultural property in Europe, ~~(i)~~ its powers should be so limited as to prevent its seizing German cultural property as replacement in kind or reparations, its claims to looted Jewish cultural property should be subject to review by military government authorities in the various zones of operation and by the local courts.

The Government of the United States should be careful to avoid approving and lending official and military assistance to a program couched in such general terms that it could be used as the basis for the creation of a Jewish agency, resembling the notorious Einsatzstab Rosenberg in reverse, which Jewish organization acting in a spirit of revenge could loot with the assistance of United States troops, German public museums, libraries, and archives, of any cultural treasures which, in the opinion of the personnel of the Jewish mission, had a Jewish character. It is contrary to elementary principles of justice that a claimant be the judge of his own claim. Government agencies, and especially troops, should not be placed under the direction of private claimants.

Public museums, libraries, and archives are an international public trust. Their protection is of interest to scholars and connoisseurs all over the world. The Nazis violated this trust, and earned the condemnation of the civilized world. It is to be hoped that the Government of the United States will not follow their example, even in a minor degree.

The Government of the United States should further assure itself and make certain that the cultural objects turned over to the international Jewish trustee corporation would not be sold to raise funds for political purposes.

Mr. Hemmingdinger stated in reply to my questions that the Jewish organizations which it is proposed to invite to participate in the corporation are well established and well known Jewish religious and cultural associations, representing



RG 59

Box 16

2  
- 7 -

all Jews in the United States, in Palestine and to some extent in Europe. Some of the organizations are international in membership. Others are confederations of local organizations. He feels that the corporation would be on a very high level of integrity, that it would be cultural and scholarly in character, and that it would have a character and prestige approaching that of an international governmental agency.

The restitution program as set forth in the Department's draft agreement of 1945<sup>o</sup>, the quadripartite procedures agreed to ~~the~~ date and, the tripartite agreement of July 8, 1946, all provide for restitution to the governments of the countries from which the property was looted. Individual claimants, corporations, voluntary associations, and churches including Jewish organizations, whether national or international in scope make their claims to the governments of the countries to which the objects are restituted. It is believed that the program of the proposed international Jewish trustee corporation could be carried out within this general framework. The corporation could undoubtedly be of great assistance to individual Jewish claimants in obtaining restitution of cultural and religious objects. In the case of objects whose owners have died without heirs, the corporation could apply to the appropriate governmental authorities having legal right to dispose of the objects to be appointed thereof. In case a quadripartite program for replacement in kind is *Trustee* adopted, the Jewish cultural property would of course be included. The Department should modify its policy to provide that the cultural property of destroyed Jewish religious communities would be included. The proposed trustee corporation could be of great assistance on a voluntary level in the practical operation of the program as it affects Jewish claims to cultural and religious property. However, the proposal originating in GA for the wholesale seizure by the United States Army of German-owned cultural objects in public museums, archives, and libraries in the American Zone if claimed by the trustee corporation to have a Jewish character, to have been written or produced by Jews, or to be related to Jewish culture, religion or history, should be rejected as contrary to international law and United States and Departmental policy, and as not being in the interest of the Jews themselves.

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3. See No. 4490 to London of June 5, 1945.



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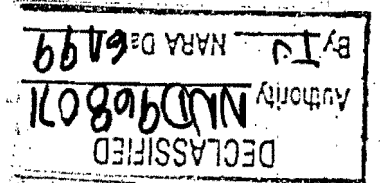
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- 8 -

Miss Hall of ADO has read most of this memorandum, made certain suggestions regarding it, and states that she is in substantial agreement with the views expressed by Mr. Stimson.

Ralph H. Stimson

RG 59

Box 16



## DEPARTMENT OF STATE

**Memorandum of Conversation**

And Supplementary Observations  
By Ralph H. Stimson.

DATE:

September 24, 1946

SUBJECT: Jewish Cultural Treasures in Germany and Austria:  
Comments on one phase of the proposal for an International Jewish Trustee Corporation submitted by the Commission on European Jewish Cultural Reconstruction.

## PARTICIPANTS:

Mr. Hemmingdinger - A-H  
Mr. Stimson - ES  
Miss Hall - ADO

## COPIES TO:

I thanked Mr. Hemmingdinger for sending me a copy of Mr. Hilldring's letter of September 18 to Professor Jerome Michael, Acting Chairman, The Commission on European Jewish Cultural Reconstruction, in reply to his long letter of August 26 regarding the creation of a membership corporation or an international Jewish trustee to receive Jewish cultural treasures in Europe.

I questioned the wisdom of the provision in Mr. Michael's letter that the commanding general of the United States Forces for Germany and the same for Austria "or other appropriate agencies of the United States shall transfer to the Corporation, as trustee for their former Jewish owners and for the Jewish people, all Hebraica and Judaica and all other Jewish religious and cultural objects in the American Zone of occupation, of whatever nature and in whatsoever possession, which are included in any of the following categories:

"\*\*\*\*\*

"d. Those which are now owned by or in the possession of German and Austrian state, municipal and other publicly-owned or maintained libraries, archives, museums and similar institutions, whenever and however they were acquired by such institutions, except such as the United States is required by existing international arrangements to which it is a party to dispose of otherwise."

sent. Law?